

IN THE MATTER OF:)
)
)
Blue Ledge Mine Site)
)
)
JANE TRACEY, AS TRUSTEE OF THE)
TRUST OF MICHELLE E. TRACEY,)
)
)
RESPONDENT.)
)
Proceeding Under Sections 104, 106, and)
122 of the Comprehensive Environmental)
Response, Compensation, and Liability)
Act, as amended (42 U.S.C. §§ 9604, 9606)
& 9622))
)

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT

UNITED STATES DEPARTMENT OF
AGRICULTURE FOREST SERVICE
PACIFIC NORTHWEST REGION

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 9
CERCLA DOCKET NO. 2018-15

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I. INTRODUCTION

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Department of Agriculture Forest Service ("Forest Service"), the United States Environmental Protection Agency ("EPA"), and Jane Tracey ("Respondent" or "Trustee"), as Trustee of the Trust of Michelle E. Tracey (the "Trust"), on behalf of the Trust. This Settlement Agreement provides for (i) the transfer of land by the Trust to the United States, and (ii) Forest Service and EPA access to land owned by the Trust; to resolve the Trust's alleged liability for certain response costs incurred by the United States at or in connection with the Blue Ledge Mine Site, (the "Site") a former copper mining site and contiguous property located in Siskiyou County, California, on land owned by the Trust.

2. The Site, which includes a portion of the land owned by the Trust ("Trust Land"), lies just south of the Oregon border and is surrounded by National Forest System ("NFS") lands under the jurisdiction, custody, and control of the Forest Service, within the established boundaries of Rogue River-Siskiyou National Forest.

3. EPA and Forest Service allege that the Site is a facility as defined by Section 101(9) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601(9).

4. The Trust asserts that the title to the Trust Land, as defined below, was transferred to the Trust as security for a loan that was never repaid, that the Trust never conducted mining operations at the Site, and that the Trust never owned or operated the Site but merely held indicia of ownership to protect its security interest in the property.

5. In 2011, EPA listed the Site on the National Priorities List for cleanup under CERCLA, 42 U.S.C. §§ 9601 *et seq.* See 40 C.F.R. § 300.425.

6. Past mining activities at the Site have caused the release of hazardous substances, including cadmium, copper, iron, lead, and zinc. In 2004, approximately 60,000 tons of exposed sulfide-rich waste rock was piled in various locations at the Site. Stormwater runoff drained through several of these waste piles, and extensive iron staining and ferricrete, indicative of acid mine drainage, were observed in a runoff channel flowing from the Site. Surface water discharges contained heightened concentrations of cadmium, copper, iron, and zinc.

7. In 2010 and 2011, in response to the release or threatened release of hazardous substances at or from the Site, the Forest Service conducted a non-time-critical removal action pursuant to CERCLA Section 104, 42 U.S.C. § 9604, in order to minimize, among other things, the impacts of the Site on NFS land. The Forest Service, as part of the removal, placed excavated material from the Site in a waste repository on a portion of the Trust Land which is not being transferred. The United States may undertake additional response actions in the future.

8. The Forest Service has incurred approximately \$12 million in costs in connection with the removal action and may incur additional response costs in the future.

9. In 2006, EPA performed an emergency removal action at the Site, which consisted of stabilizing tailings and waste rock on steep slopes to prevent erosive loss to an unnamed tributary, Joe Creek, and surface water bodies downstream; providing soil and vegetative cover to tailings and waste rock to reduce the likelihood of direct human contact with contaminants in these materials; and reducing localized acid mine drainage impacts to the tributary. EPA is currently conducting a Remedial Investigation and Feasibility Study for the Site.

10. The EPA has incurred approximately \$3.4 million in unreimbursed costs in connection with its response activities at the Site and may incur additional response costs in the future.

11. The Forest Service and EPA allege that the Trust is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred or to be incurred at or in connection with the Site.

12. The Trust avers that it lacks the ability to pay for the past response actions or any future response action at the Site.

13. EPA has reviewed the financial information submitted by the Trust to determine whether the Trust is financially able to pay response costs incurred and to be incurred at the Site. Based upon this financial information, EPA has determined that the Trust has limited financial ability to pay for response costs incurred and to be incurred at the Site. The Forest Service also has reviewed the Trust's financial information and concurs with EPA's determination.

14. The Parties recognize that the Trust Land is contiguous with NFS land and that the removal action was determined by the United States to be necessary to minimize impacts to NFS land and the environment. The Parties also recognize that transfer of certain portions of the Trust Land to the United States will, among other things, be in the best interest of stewardship of the land, and that providing EPA and Forest Service access to, and imposing certain controls and restrictions on, the Remaining Trust Land, as defined below, will be in the best interest of human health and the environment.

15. The Parties further recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by the Trust in accordance with this Settlement Agreement do not constitute an admission of any liability, and nothing in this Agreement is intended to impose personal liability on the Trustee. The Trust does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to

implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

II. JURISDICTION

16. This Settlement Agreement is entered into under the authority vested in the President of the United States by CERCLA Sections 104 and 122, 42 U.S.C. §§ 9604 & 9622. This authority was delegated to the Secretary of Agriculture (the "Secretary") by Executive Order 12580, 52 Fed. Reg. 2923 (January 29, 1987). The Secretary's authority was further delegated to the Chief of the Forest Service (the "Chief") by 7 C.F.R. § 2.60(a)(39). The Chief's authority was re-delegated to the Regional Foresters, pursuant to the Forest Service Manual 2164.04c, 2.1, effective November 10, 1994.

17. This Settlement Agreement also is entered into pursuant to the authority vested in the Administrator of the EPA by CERCLA Section 122(h)(1), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders) and further redelegated from the Regional Administrator for EPA Region 9 to the Branch Chiefs of the Superfund Division of EPA Region 9, by EPA Regional Delegation No. R9 14-14D.

18. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Deputy Section Chief.

19. The Trust consents to the Forest Service's and EPA's authority to enter into this Settlement Agreement and agrees to comply with and be bound by the terms of this Settlement Agreement. In any action by the United States to enforce the terms of this Settlement Agreement, the Trust agrees not to contest the authority and jurisdiction of the Forest Service and EPA to enter into and enforce this Settlement Agreement, or the basis or validity of the Settlement Agreement or its terms.

III. PARTIES BOUND

20. This Settlement Agreement applies to and is binding upon the Forest Service, EPA, and the Trust. Any change in the Trust's beneficiaries or status, including, but not limited to, any voluntary transfer of assets or real or personal property, shall not alter the Trust's responsibilities under this Settlement Agreement. Each signatory to the Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her. The Trust shall ensure that its known agents, beneficiaries, successors, and transferees receive a copy of this Settlement Agreement.

IV. STATEMENT OF PURPOSE

21. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by agreeing as part of this settlement that the Trust will transfer land and implement land use restrictions to address its alleged civil liability for the Site as provided in the Covenants by the Forest Service and EPA in Section X, subject to the Reservations of Rights by the Forest Service and EPA in Section XI.

V. DEFINITIONS

22. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the attachments hereto and incorporated hereunder, the following definitions shall apply:

- a. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*
- b. “Day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.
- c. “Effective Date” shall be the effective date of this Settlement Agreement as provided in Section XVIII.
- d. “EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.
- e. “Forest Service” shall mean the United States Department of Agriculture Forest Service and any successor departments, agencies, or instrumentalities.
- f. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.
- g. The “Land Transfer” shall mean the transfer of certain delineated portion(s) of the Trust Land, as defined below, from the Trust to the United States, in accordance with Section VIII.

h. “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

i. “NFS Lands” shall mean lands that are part of the National Forest System.

j. “Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

k. “Parties” shall mean the Forest Service, EPA, the Trust, and the Trustee.

l. “RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

m. “Remaining Trust Land” shall mean the portion of the Trust Land to which the Trust still holds title after the Land Transfer takes place.

n. “Respondent” shall mean Jane Tracey, Trustee of the Trust of Michele E. Tracey.

o. “Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

p. “Settlement Agreement” shall mean this Administrative Settlement Agreement and Order on Consent and the attachments hereto (listed in Section XX). In the event of conflict between this Settlement Agreement and the attachments, this Settlement Agreement shall control.

q. “Site” shall mean the Blue Ledge Mine Site, currently encompassing approximately 50 acres, located in Siskiyou County, California, approximately 3.5 miles south of the Oregon border, and including any areas where hazardous substances from the Blue Ledge Mine Site have or will come to be located.

r. “Transfer Parcel(s)” shall mean the portion(s) of the Trust Land, as defined below, which the Forest Service determines shall be included in the Land Transfer.

s. The “Transfer Parcel Legal Description” shall mean the legal land description narrative and/or map describing the location(s) and boundaries of the Transfer Parcel(s).

t. The “Trust,” except as provided in Paragraph 35, shall mean the Trust of Michelle E. Tracey and its trustees, successors, and transferees.

u. "Trust Land" shall mean the land and/or interests therein encompassing 25 separate patented mining claims in Siskiyou County, California to which the Trust holds title as of the Effective Date of this Settlement Agreement, as depicted on the map attached as Attachment A.

v. "Trustee" shall mean the current trustee of the Trust of Michelle E. Tracey, and any successor trustee.

w. "United States" shall mean the United States of America and each department, agency and instrumentality of the United States, including the Forest Service and EPA.

VI. SETTLEMENT AGREEMENT AND ORDER

23. It is hereby Ordered and Agreed that the Parties shall comply with all provisions of this Settlement Agreement, including, but not limited to, the attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. PROPERTY REQUIREMENTS

24. Access and Non-Interference:

- a. The Forest Service and its representatives, contractors, and subcontractors shall have access at all reasonable times to the Trust Land to conduct any activity necessary to determine the scope and boundaries of the Transfer Parcel(s);
- b. The Forest Service, EPA and their representatives, contractors, and subcontractors shall have access at all reasonable times to the Trust Land prior to the Land Transfer, and to the Remaining Trust Land after the Land Transfer, for the following activities:
 - i. Verifying any data or information submitted to the United States;
 - ii. Conducting investigations regarding contamination;
 - iii. Obtaining samples;
 - iv. Assessing the need for, planning, implementing, or monitoring additional response actions;
 - v. Assessing the Trust's compliance with this Settlement Agreement;

- vi. Determining whether the Trust Land prior to the transfer and the Remaining Trust Land after the transfer is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted; and
 - vii. Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and institutional controls.
- c. The Trust shall refrain from using, and prohibit use of, the Trust Land prior to the Land Transfer, and the Remaining Trust Land after the Land Transfer, in any manner that EPA determines will (1) pose an unacceptable risk to human health or the environment due to exposure to hazardous substances or (2) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Site, including:
- i. The use of contaminated groundwater;
 - ii. Activities that could result in exposure to contaminants in subsurface soils and groundwater; and
 - iii. Activities that could interfere with response actions at the Site.

25. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed regarding the Site, the Trust shall cooperate with EPA's efforts to secure and ensure compliance with such institutional controls.

26. Notice to Successors-in-Title:

- a. The Trustee shall, within 30 days after the Effective Date, submit for EPA and Forest Service approval a notice regarding the Trust Land to be recorded in the Siskiyou County, California land records. The notice must: (1) include a proper legal description of the Trust Land; (2) provide notice to all successors-in-title: (i) that the Site is part of, or related to, the Trust Land; (ii) that the Forest Service and EPA performed response actions for the Site; and (iii) of the access and non-interference requirements set forth in Paragraph 24. The Trustee shall record the notice within 20 days after EPA's approval of the notice and submit to EPA, within 20 days thereafter, a certified copy of the recorded notice.

- b. The Trust shall not enter into any contract to transfer any portion of the Trust Land prior to the Land Transfer in accordance Section VIII (Land Transfer) without prior written approval by the Forest Service and EPA.
- c. Prior to the Trust's entering into a contract to transfer any portion of the Trust Land in accordance with Paragraph 26.b or any portion of the Remaining Trust Land, other than the transfer contemplated herein the Trustee shall:
 - i. Notify the proposed transferee that EPA and Forest Service have performed response actions at the Site and may perform additional response actions at the Site in the future; and
 - ii. Notify the Forest Service and EPA of the name and address of the proposed transferee and provide the Forest Service and EPA with documentation demonstrating that a copy of the notice referenced in Paragraph 26.a was provided to the proposed transferee.

27. Notwithstanding any provision of this Settlement Agreement, the Forest Service and EPA retain all of their access authorities and rights, as well as all of their rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and/or any other applicable statutes or regulations.

VIII. LAND TRANSFER

28. Within 1 year of the Effective Date, the Forest Service will provide the Trust with a Transfer Parcel Legal Description, which describes the location(s) and boundaries of the Transfer Parcel(s) and a description of what will become the Remaining Trust Land after the transfer takes place.

29. In consideration of the covenants not to sue set forth in Section X (Covenants by the Forest Service and EPA), the Trustee shall:

- a. Within sixty (60) Days of receipt of the Transfer Parcel Legal Description, ensure that the Trust conveys title to the Transfer Parcel(s) to the United States by executing on behalf of the Trust the Grant Deed, attached hereto as Attachment B, and including the Transfer Parcel Legal Description as Exhibit A to the Grant Deed;
- b. Within sixty (60) Days of receipt of the Transfer Parcel Legal Description, record with the Siskiyou County Recorder's Office the executed Grant Deed with Exhibit A; and

30. Within sixty (60) Days of receipt of the recorded Grant Deed, the United States shall provide a copy of the recorded Grant Deed to the Trust in accordance with Section XV (Notices and Submissions).

31. Until the Transfer Parcel(s) is/are conveyed to the United States, the Trust (i) shall timely pay or cause to be timely paid all real property taxes on the Trust Land, and (ii) shall not take out a mortgage on the Trust Land, use the Trust Land to secure a debt, or otherwise voluntarily encumber the Trust Land.

IX. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

32. Stipulated Penalty.

- a. If the Trust fails to comply with any portion of Section VIII (Land Transfer), stipulated penalties of \$1,000 per day for each day of noncompliance shall accrue.
- b. The following stipulated penalties shall accrue per violation per day for any noncompliance with Section VII (Property Requirements):

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$1,000
15th through 30th day	\$2,000
31st day and beyond	\$4,000

- c. All penalties accruing under this Section shall be due and payable to the United States within 30 days after the Trust's receipt from EPA and/or the Forest Service of a demand for payment of the penalties. The Trust shall make all payments required by this Section to the United States by check, submitted by U.S. Mail, payable to:

U.S. EPA Hazardous Substance Superfund
US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

- d. At the time of each payment, the Trust shall send notice that payment has been made to (a) the United States in accordance with Section XV

(Notices and Submissions); and (b) the EPA Cincinnati Finance Center (CFC) by email or by regular mail at:

EPA CFC by email: cinwd_acctsreceivable@epa.gov

EPA CFC by regular mail: EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268.

Such notice shall reference the Site name, Site/Spill ID Number and EPA docket number for this action.

- e. Penalties shall accrue as provided in this Paragraph regardless of whether the United States has notified the Trust of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

33. In addition to the Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of the Trust's failure to comply with the requirements of this Settlement Agreement, if the Trust fails or refuses to comply with any term or condition of this Settlement Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, the Trust shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

34. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. The Trust's payment of stipulated penalties shall not excuse the Trust from performance of any other requirements of this Settlement Agreement.

X. COVENANTS BY THE FOREST SERVICE AND EPA

35. For purposes of this subsection (a) only, "Trust" shall mean the Trust of Michelle E. Tracey and its trustees, fiduciaries, beneficiaries, successors, and transferees, to the extent that such trustees, fiduciaries, beneficiaries, successors, and transferees have liability for the Site derived from those entities' relationships to or affiliations with the Trust.

- a. In consideration of the Land Transfer made by the Trust under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement in Section XI (Reservations of

Rights by the Forest Service and EPA), the Forest Service and EPA covenant not to sue or to take administrative action against the Trust pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with respect to the Site.

- b. These covenants not to sue shall take effect upon the Effective Date and are conditioned upon the complete and satisfactory performance by the Trust and the Trustee of all obligations under this Settlement Agreement, including, but not limited to, complying with all requirements set forth in Section VII (Property Requirements) and Section VIII (Land Transfer). These covenants are also conditioned upon the veracity and completeness of the financial information provided to the Forest Service and EPA by the Trust and the financial, insurance, and indemnity certification made by the Trust in Paragraph 57. These covenants not to sue extend only to the Trust and do not extend to any other person.

XI. RESERVATIONS OF RIGHTS BY THE FOREST SERVICE AND EPA

36. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of the Forest Service or EPA to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent the Forest Service or EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, or from taking other legal or equitable action as it deems appropriate and necessary.

37. The covenants not to sue set forth in Section X above do not pertain to any matters other than those expressly identified therein. The Forest Service and EPA reserve, and this Settlement Agreement is without prejudice to, all rights against the Trust with respect to all other matters, including, but not limited to:

- a. liability for failure by the Trust and/or Trustee to meet their respective requirements of this Settlement Agreement;
- b. criminal liability;
- c. liability based on the Trust's future transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by the Trustee, on behalf of the Trust; and

- d. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

38. Notwithstanding any other provision of this Settlement Agreement, EPA and Forest Service reserve, and this Settlement Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Settlement Agreement, if the financial information provided by the Trust, or the financial, insurance, or indemnity certification made by the Trust in Paragraph 57, is false or, in any material respect, inaccurate.

39. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that the Forest Service or EPA may have against any person, firm, corporation, or other entity not a party to this Settlement Agreement.

XII. COVENANTS BY THE TRUST

40. The Trust covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of or in connection with response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of California, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, or state law relating to the Site.

41. Except as provided in Paragraph 43 (claims against other PRPs) and Paragraph 48 (res judicata and other defenses), these covenants shall not apply in the event the United States, including Forest Service or EPA, brings a cause of action or issues an order pursuant to any of the reservations in Section XI (Reservations of Rights by the Forest Service and EPA), other than in Paragraph 37.a (liability for failure to meet a requirement of the Settlement Agreement) or 37.b (criminal liability), but only to the extent that the Trust's claims arise from the same

response action or response costs that the United States, including Forest Service and/or EPA, is seeking pursuant to the applicable reservation.

42. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

43. The Trust agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613) that it may have for response costs relating to the Site against any other person who is a potentially responsible party ("PRP") under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that the Trust may have against any person if such person asserts a claim or cause of action relating to the Site against the Trust.

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION

44. Except as provided in Paragraph 43 (waiver of claims against other PRPs), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section XII (Covenants by the Trust), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to CERCLA Section 113, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to CERCLA Section 113(f)(2) and (3), 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to CERCLA Section 113(f)(2).

45. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of CERCLA Sections 113(f)(2) and 122(h)(4), 42 U.S.C. §§ 9613(f)(2), 9622(h)(4), and that the Trust is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Sections 113(f)(2) and 122(h)(4), 42 U.S.C. §§ 9613(f)(2), 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, except for the State; provided, however, that if the Forest Service and/or EPA exercise rights under the reservations in Section XI (Reservations of Rights by the United States), other than in Paragraphs 37.a (liability for failure to meet a requirement of the Settlement Agreement) or 37.b (criminal liability), the "matters addressed" in this Settlement Agreement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

46. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of CERCLA Section 113(f)(3)(B), 42 U.S.C. § 9613(f)(3)(B), pursuant to which the Trust has, as of the Effective Date, resolved its liability to the United States.

47. The Trust shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA and the Forest Service in writing no later than 60 days prior to the initiation of such suit or claim. The Trust also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA and the Forest Service in writing within 10 days after service of the complaint or claim upon it. In addition, the Trust shall notify EPA and the Forest Service within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

48. In any subsequent administrative or judicial proceeding initiated by the Forest Service, EPA, or by the United States on behalf of the Forest Service or EPA, for recovery of response costs, injunctive relief, or other relief relating to the Site, the Trust shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of covenants by the United States set forth in Section X.

49. Effective upon signature of this Settlement Agreement by the Trust, the Trust agrees that the time period commencing on the date of the Trust's signature and ending on the date that the conditions required by Section VIII (Land Transfer) are satisfied shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States relating to the "matters addressed" as defined in Paragraph 45, and that, in any action brought by the United States related to the "matters addressed," the Trust will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the United States gives notice to the Trust that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety (90) Days after the date such notice is sent by the United States.

50. Except as expressly provided in Section X (Covenants by the United States), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against the Trust or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607.

51. No action or decision by the United States pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XIV. RETENTION OF RECORDS

52. Until 5 years after the Effective Date, the Trust shall preserve and retain all non-identical copies of records, reports, documents, and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as “Records”) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that if the Trust is potentially liable as an owner or operator of the Site, the Trust must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each of these requirements shall apply regardless of any corporate retention policy to the contrary.

53. At the conclusion of the document retention period, the Trust shall notify the United States in accordance with Section XV (Notices and Submissions) at least 90 days prior to the destruction of any such Records, and, upon request by the United States, and except as provided in Paragraph 54 (Privileged and Protected Claims), the Trust shall deliver any such Records to the United States.

54. Privileged and Protected Claims

- a. If the Trust is required to provide these records to the United States, the Trust may assert that all or part of a Record is privileged or protected as provided under federal law, provided it complies with Paragraph 54.b, and except as provided in Paragraph 54.c.
- b. If the Trust asserts a claim of privilege or protection, it shall provide the United States with the following information regarding such Record: its title; its date; the name, title, affiliation (*e.g.*, company or firm), and address of the author, each addressee, and of each recipient; a description of the Record’s contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, the Trust shall provide the Record to the United States in redacted form to mask the privileged or protected portion only. The Trust shall retain all Records that it claims to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Trust’s favor.
- c. The Trust may make no claim of privilege or protection regarding:

- i. any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or
- ii. the portion of any Record that the Trust is required to create or generate pursuant to this Settlement Agreement.

55. **Business Confidentiality Claims.** The Trust may assert that all or part of a Record submitted under this Section is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). The Trust shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which the Trust asserts a business confidentiality claim. Records that the Trust claims to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to the United States, or if the United States has notified the Trust that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to the Trust.

56. Notwithstanding any provision of this Settlement Agreement, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

57. The Trust certifies that, to the best of its knowledge and belief, after thorough inquiry, the Trust has:

- a. not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to the Trust's potential liability regarding the Site since the earlier of notification of potential liability by the United States and that it has fully complied with any and all of the United States' requests for information regarding the Site and the Trust's financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e), 9622(e);
- b. submitted to the Forest Service and EPA financial information that fairly, accurately, and materially sets forth the Trust's financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to the Forest Service and EPA and the time the Trustee executes this Settlement Agreement; and

- c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to the Forest Service and EPA upon request such insurance policies, indemnity agreements, and information.

XV. NOTICES AND SUBMISSIONS

58. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to such Party.

As to the United States:

U.S. Department of Justice: Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
EESCaseManagement.ENRD@usdoj.gov
Re: DOJ No. 90-11-3-08633/5

Rachael Amy Kamons
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Rachael.Kamons@usdoj.gov

and

Forest Service: Gary M. Fremerman
Senior Counsel
Natural Resources and Environment Division
USDA Office of the General Counsel
1400 Independence Avenue, S.W.
Room 2013-South Building
Washington, D.C. 20250

202-720-8041 (Tel.)
1-844-354-1119 (Fax)
Gary.Fremerman@ogc.usda.gov

Julia Creed, PE
Environmental Engineering Program Lead
Forest Service, Alaska and Pacific Northwest Regions
1220 SW 3rd Avenue, PO Box 3623
Portland, OR 97208
Jcreed01@fs.fed.us

and

EPA:

Bianca Handley
Remedial Project Manager
EPA Region 9 Superfund Division
75 Hawthorne Street
San Francisco, CA 94105-3920
Handley.bianca@epa.gov

Tessa Berman
Assistant Regional Counsel
EPA Region 9 Office of Regional Counsel
75 Hawthorne Street
San Francisco, CA 94105-3920
Berman.tessa@epa.gov

As to the Trust and Trustee: Sean David Kelly
Attorney for the Michelle E. Tracey Trust
Sean Kelly, PC
30 North 5th St.
P.O. Box 725
Cottage Grove, OR 97424-2005
sean@oregonlawoffice.com

and

Lee N. Smith
Attorney for the Michelle E. Tracey Trust
Coleman & Horowitz, LLP
499 W. Shaw Avenue, Suite 116
Fresno, California 93704
lsmith@ch-law.com

and

Jane A. Tracey
1649 Ridgeway
Oceanside, CA 92054

XVI. PUBLIC COMMENT

59. This Settlement Agreement shall be subject to a public comment period of not less than thirty (30) Days pursuant to CERCLA Section 122(i), 42 U.S.C. § 9622(i). In accordance with CERCLA Section 122(i), the United States may withdraw consent to this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper or inadequate.

XVII. INTEGRATION

60. This Settlement Agreement and its attachment constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

XVIII. EFFECTIVE DATE

61. The Effective Date of this Settlement Agreement shall be the date upon which the United States issues written notice that the public comment period pursuant to Paragraph 59 has closed and that comments received, if any, do not require withdrawal by the United States from this Settlement Agreement.

XIX. MODIFICATION

62. The terms of this Settlement Agreement may be modified only by the written agreement of the Parties.

XX. ATTACHMENTS

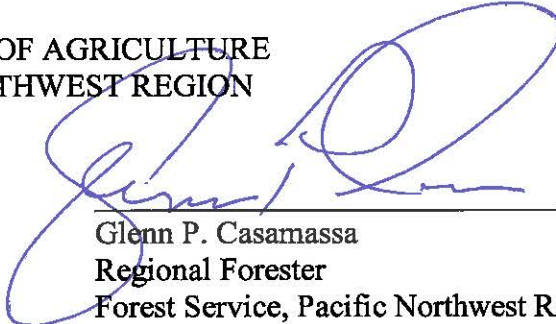
63. The following documents are attached to and incorporated into this Settlement Agreement:

Attachment A: Map of the Trust Land.

Attachment B: Grant Deed Conveying the Transfer Parcel(s) to the United States.

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE, PACIFIC NORTHWEST REGION

7/17/19
Date


Glenn P. Casamassa
Regional Forester
Forest Service, Pacific Northwest Region
U.S. Department of Agriculture

ACKNOWLEDGEMENT

STATE OF Oregon

County of Multnomah

Subscribed and sworn to (or affirmed) before me on this 17 day of July, 2019 by
Glenn P. Casamassa, proved to me on the basis of satisfactory evidence to be the person who
appeared before me.

Jackie Parmer (Notary seal)
Signature

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9/17/19
Date

Dana Barton
Dana Barton
Assistant Director
Superfund Division
EPA Region IX

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UNITED STATES DEPARTMENT OF JUSTICE, ENVIRONMENT AND NATURAL
RESOURCES DIVISION, ENVIRONMENTAL ENFORCEMENT SECTION

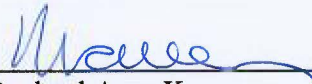
Date



Ellen M. Mahan
Deputy Section Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
Washington, D.C. 20044-7611

9/18/19

Date



Rachael Amy Kamons
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
Washington, D.C. 20044-7611

[INTENTIONALLY LEFT BLANK]

JANE TRACEY, AS TRUSTEE OF THE TRUST OF MICHELLE E. TRACEY

May 8, 2019
Date

Jane Tracey, Trustee
Jane Tracey, Trustee of the Trust of Michelle E. Tracey
1649 Ridgeway
Oceanside, CA 92054

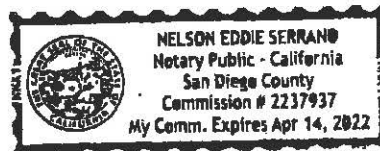
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Jurat

State of California
County of San Diego

Subscribed and sworn to (or affirmed) before me on this 08th day of May
20 19 by Jane Tracey
proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

[Signature]
Signature (Notary seal)



TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances, unto the United States of America and its assigns forever.

IN WITNESS WHEREOF, I have set my hand this 8 day of MAY,
"2019."

By: Jane Tracey, Trustee
Jane Tracey
Trustee of the Trust of Michelle E. Tracey

ACKNOWLEDGMENT

STATE OF California)
County of San Diego) ss.

On this 8th day of May, 2019, before me, the undersigned, personally appeared Jane Tracey, personally known to me (or proved to me on the basis of satisfactory evidence) to be the individual who executed the within and foregoing instrument as Trustee of the Trust of Michelle E. Tracey, the Trust therein named, and acknowledged that the Trust executed the same as its free and voluntary act and deed for the purposes therein mentioned, and on oath stated that he/she was authorized to so execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

[Signature]
Name (Printed) Nelson Eddie Serrano

